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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,180	03/15/2004	John R. Prybella	1611/A43	3208
2101	7590	06/24/2004	EXAMINER	
BROMBERG & SUNSTEIN LLP 125 SUMMER STREET BOSTON, MA 02110-1618			RAEVIS, ROBERT R	
			ART UNIT	PAPER NUMBER
			2856	

DATE MAILED: 06/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/801,180		Applicant(s) PRYBELLA ET AL. OK	
	Examiner Robert R. Raevis		Art Unit 2856	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☐ Responsive to communication(s) filed on ____.

2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-75 is/are pending in the application.

 4a) Of the above claim(s) ____ is/are withdrawn from consideration.

5) ☐ Claim(s) ____ is/are allowed.

6) ☐ Claim(s) ____ is/are rejected.

7) ☐ Claim(s) ____ is/are objected to.

8) ☒ Claim(s) 1-75 are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date ____.

4) ☐ Interview Summary (PTO-413)
 Paper No(s)/Mail Date. ____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: ____.

El ction/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 2,3,24-30,33,32,69-73 drawn to sampling system with a needle/conduit, classified in class 73, subclass 864.74.
- II. Claims 4-6,75,34,35, drawn to sampling system with fluid passageway section capture chamber, classified in class 73, subclass 863.71.
- III. Claims 9,10,15,40,43,44,63 drawn to sampling system with gas vent filter, classified in class 73, subclass 863.23.
- IV. Claims 11-14,36-39,53-59,67,68 drawn to sampling system to draw sample though a container wall, classified in class 73, subclass 863.81.
- V. Claims 16-19,46-49,74,61,62 drawn to sampling system that employs a flexible bag as a pump, classified in class 73, subclass 864.35.
- VI. Claims 22,45,65 drawn to sampling system with clamp to control flow, classified in class 73, subclass 864.73.

Claims 1,7,8,21,23,41,42,51,52,60,66 link I to VI.

Claim 31 links I and II.

Claim 55 links I and V.

Claims 20 and 50 link I,II,III,IV,VI.

Inventions V (apparatus claims) and I-IV,VI (apparatus claims) are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the

subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because all limitations of I-IV,VI are not in V. The subcombination has separate utility such as samplers that employ gravity to induce flow (as opposed to a flexible pumping chamber).

Inventions V (method) and I-IV,VI (method claims) are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because all limitations of I-IV,VI are not in V. The subcombination has separate utility such as samplers that employ gravity to induce flow (as opposed to a flexible pumping chamber).

Inventions V (method claims) and I-IV,VI (apparatus claims) are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus claims can be carried out by employing gravity to induce flow.

Inventions I-IV,VI (method claims) and V (apparatus claims) are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the method can be carried out by employing gravity to induce flow.

Inventions IV (apparatus claims) and I-III,VI (apparatus claims) are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because all limitations of I-III,VI are not in IV. The subcombination has separate utility such as samplers that sample from a pool of liquid.

Inventions IV (method) and I-III,VI (method claims) are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because all limitations of I-III,VI are not in IV. The subcombination has separate utility such as samplers that sample from a pool of liquid.

Inventions IV (method claims) and I-III,VI (apparatus claims) are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus claims can be carried to sample from a pool of liquid.

Inventions I-III,VI (method claims) and IV (apparatus claims) are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the method can be employed to sample from a pool of liquid.

Inventions VI (apparatus claims) and I-III (apparatus claims) are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because all limitations of I-III,VI are not in IV. The subcombination has separate utility such as samplers that control flow by application of a predefined orifice.

Inventions VI (method) and I-III (method claims) are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the

combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because all limitations of I-III, VI are not in IV. The subcombination has separate utility such as samplers that control flow by application of a predefined orifice.

Inventions VI (method claims) and I-III (apparatus claims) are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus claims can be applied by controlling flow by application of a predefined orifice.

Inventions I-III (method claims) and VI (apparatus claims) are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the method can be employed by controlling flow by application of a predefined orifice.

Inventions I (apparatus claims) and II-III (apparatus claims) are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility

by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because all limitations of I-II are not in I. The subcombination has separate utility such as samplers that do not employ a needle/conduit, but are simply immersed into the body of liquid to be sampled.

Inventions I (method) and II-III (method claims) are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because all limitations of II-III are not in I. The subcombination has separate utility such as a sampling method that does not employ a needle/conduit, but employs a sampler that is immersed into the body of liquid to be sampled.

Inventions I (method claims) and II-III (apparatus claims) are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus claims can be applied by immersing the sampler into the body of liquid to be sampled.

Inventions II-III (method claims) and I (apparatus claims) are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either:

(1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the method can be employed by immersing the sampler into the body of liquid to be sampled.

Inventions III (apparatus claims) and II (apparatus claims) are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because all limitations of II are not in III. The subcombination has separate utility such as samplers that do not employ a filter that unnecessarily obstructs flow, allowing for fast fluid flow.

Inventions III (method) and II (method claims) are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because all limitations of II are not in III. The subcombination has separate utility such as a sampling method that does not employ a filter that unnecessarily obstructs flow, allowing for efficient fluid flow.

Inventions III (method claims) and II (apparatus claims) are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus claims can be applied by employing a sampler without a filter to allow for fast flow of sample at the site of interest.

Inventions II (method claims) and II (apparatus claims) are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the method can be employed without a filter to allow for fast flow of sample at the site of interest.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and the search required for each group is different, restriction for examination purposes as indicated is proper.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert R. Raevis whose telephone number is 571-272-2204. The examiner can normally be reached on Monday to Friday from 7am to 4pm.

Art Unit: 2856

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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